

## Guide: Terms of trade

Terms of trade differ from business to business and industry to industry. Small businesses can often fit terms of trade on an A4 sheet of paper. In contrast the terms of trade for more complex businesses can run to several pages in length.

Make sure your terms of trade are geared to your business.

If it's appropriate to your business, seek a terms of trade agreement. With an agreement, you have not only disclosed your terms of trade — your customer has also agreed to them.

### Areas to include

When drafting terms of trade for a standard seller of goods or services consider the following:

Terms	Notes
The Parties	Clearly identify the legal entity you are contracting with
Goods and/or Services	An exact description of the nature of the goods and/or services is essential
Price	
Payment	Including whether the customer is liable for late payment or debt collection costs in the event of unpaid invoices
Delivery	
Risk and Insurance	
Reservation of Title	The Consumer Guarantees Act 1993 requires that for a reservation of title clause to be enforceable, it must be fully explained to the buyer, and it is preferable for the buyer to acknowledge this in writing and to be given a copy
Installation	Specify the obligations on the buyer to provide suitable premises, accessibility, services, and amenities
Limits on Liabilities	Consider liabilities for defective products and a policy on refunds. Supplying goods and services to consumers prevents contracting out of the guarantees and remedies implied by the Consumer Guarantees Act.  However, supply of goods or services to businesses is open to parties agreeing in writing that the Act does not apply, allowing the parties to agree on liability
Warranty	
Miscellaneous	For example, indemnity, credit checks, and so on

### Terms of trade checklist

Work through the checklist to clarify what you would like to include in terms of trade for your business.

It is best that the customer signs acceptance of these terms before the goods or services are provided. If they don't, then they could claim later they did not know about them or agree to them. There are 3 areas that you can only enforce effectively if the customer has agreed to them:

- interest on overdue accounts: if you intend to charge interest on overdue accounts, customers must be aware in advance of these possible penalties
- if unpaid invoices progress to debt collection and the collection agency charges collection costs which you pass on to the debtor, customers must know about this when they buy (or order) the goods or services. You have the option to include this in your terms of trade or to display clear notices about collection costs or print notices on credit application forms. A suitable notice might

say something like: “Unpaid accounts will incur late payment fees and collection costs”

- ownership of goods: the same applies to any clauses about your retaining ownership of the goods until they are paid for

## Keep in mind

It is not enough for a business to simply post out terms of trade to its customers and expect customers to be bound by them. The proper way is to have customers sign their acceptance. This is particularly important where directors or shareholders personally guarantee the performance of their company and where the provider of goods or services wants to be able to charge interest on unpaid monies.

Terms of trade are not generic documents, and they are the subject of considerable litigation.

Think carefully about what terms of trade best suit your business. We've included some sample templates just to get you started. An internet search will reveal companies that can provide readymade terms of trade documents.

However, every business has different areas of exposure to risk, and different needs in a terms of trade agreement. Your solicitor is the best person to draft an agreement suitable for your business, especially if there is any possibility of exposure to litigation through issues such as liability or warranty.

We are happy to go through the checklist and sample templates with you to identify what is most relevant to you so you can best instruct your legal advisor on your needs.

## Terms of Trade Checklist

	✓
<b>1. The Parties — identify the legal entity you are contracting with</b> <input type="checkbox"/> Corporate <input type="checkbox"/> Individual <input type="checkbox"/> Trust	□
<b>2. Goods and/or Services</b> <input type="checkbox"/> If dimensions and specifications are included, are these exact or just estimates? <input type="checkbox"/> Will there be customary or reasonable tolerances allowed?	□
<b>3. Price</b> <input type="checkbox"/> Is the price fixed or can it be varied? <input type="checkbox"/> Does the price include or exclude GST? <input type="checkbox"/> Is the price a firm quote or only an estimate? <input type="checkbox"/> If a quote is given, how long does it remain open for acceptance?	□
<b>4. Payment</b> <input type="checkbox"/> Is the price payable 'cash on delivery', or is credit given? <input type="checkbox"/> If on invoice, how many days after receipt of the invoice must the invoice be paid? <input type="checkbox"/> What is the interest rate on credit provided? _____ % <input type="checkbox"/> Will penalty interest accrue on an unpaid debt if payment is not made by due date? <input type="checkbox"/> Is the debtor to incur the supplier's costs of pursuing the debt? <input type="checkbox"/> Should a personal guarantee be obtained from the directors of a Company, or the trustees of a Trust?	□
<b>5. Delivery</b> <input type="checkbox"/> How, when, and where will goods be delivered? <hr/>	□



- |                          |                         |  |
|--------------------------|-------------------------|--|
| <input type="checkbox"/> | Change of buyer details |  |
| <input type="checkbox"/> | Notices                 |  |
| <input type="checkbox"/> | Privacy                 |  |
| <input type="checkbox"/> | Credit checks           |  |

Completed by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

## Terms of Trade Example 1

[Company Name]

### Terms of Trade Agreement

#### Parties

An Agreement dated [Date]

Between [Company Name], the supplier, called 'The Company'  
 [Address]  
 And [Customer Name], 'The Customer'  
 [Address]

By requesting the Company to supply goods to the Customer, the Customer acknowledges and agrees (or is deemed to acknowledge and agree) that:

- The Customer's written assent or agreement to the Company's terms and conditions of trade (the 'Terms') constitutes a security agreement in favour of the Company in all of the present and after-acquired property supplied by the Company to the Customer; and
- The Terms will apply to each Contract and the supply of goods by the Company to the Customer and, where applicable, the provision of any incidental services under the Contract; and
- The Terms will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms were set out or implied therein in full

#### Goods and/or Services

- [Description of goods and/or services]
- All dimensions and specifications included are [exact/estimates]

#### Price

- Prices quoted are excluding GST unless otherwise stated and all goods sold are subject to GST

#### Payment

- Unless otherwise agreed, payment of the purchase price shall be paid to the Company by the 20th of the month following the month in which the invoice is dated
- Interest at [Rate of Interest]% per month may be charged on overdue accounts
- Any expenses, costs and disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees or solicitor costs shall be paid by the Customer

#### Delivery

- The Company shall deliver the goods to the address stated on the front page of this document. While every effort will be made to ensure that delivery of goods is on time, the Company will not be in any way responsible for any damages or consequential loss (direct or indirect) arising from any delay in delivery

#### Risk and Insurance

- The Customer shall inspect the goods on delivery and shall within five days of delivery notify the Company of any alleged defect, shortage in quantity, damage, or failure to comply with description or sample. The Customer shall afford the Company an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Customer shall fail to comply with these provisions the goods shall be conclusively presumed to be free from any defect or damage which would be apparent on a reasonable examination of the goods and the Customer shall be deemed to have accepted the goods
- The Company shall not be responsible for any damage whatsoever caused in the event that the goods are fitted, serviced or operated incorrectly or if the goods are in any way adapted or used in a manner not intended by or made known to the Company
- The goods remain at the risk of the Company until delivery to the Customer.

### **Reservation of Title**

- The Company shall retain ownership of the goods until full payment is received and the Customer acknowledges this by signature of these Terms of Trade
- Until property in goods passes to the Customer, the Customer holds the goods as the Company's bailee and, as agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the goods are kept to inspect the goods. The Customer must store the goods so they can be identified separately from the Customer's own goods. The Company authorises the Customer, in the ordinary course of the Customer's business, to use the goods or resell them for full consideration
- This authority is revoked immediately if:
  - An Event of Default occurs; or
  - The Company notifies the Customer in writing that this authority is revoked

### **Limits on Liabilities**

- The Company shall be under no liability to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions of trade. Any claim against the Company shall be limited to the invoice value of the goods
- The Company shall not be responsible for any damage whatsoever caused in the event that the goods are fitted, serviced or operated incorrectly or if the goods are in any way adapted or used in a manner not intended by or made known to the Company

### **Warranty**

- The Company warrants the goods against faulty workmanship for a period of [Period of Warranty] from the date of delivery of the goods
- The Company warrants that the fabricated goods will substantially conform with written specifications supplied by the Customer
- A claim under this clause must be made in writing to the Company within [Period of Warranty] from the date of delivery of the goods and no claim can be made under this clause unless and until the price is paid in full. The Customer must also give the Company notice of any defect in the goods within 7 days of the defect becoming apparent
- The Company's liability under this clause will be limited in its sole discretion to:
  - Restoring the goods in conformity with the written specifications supplied by the Customer; or
  - Replacing the goods
- Any repairs will be done at such place as the Company specifies and the Customer is responsible for cartage of the goods or parts of the goods as is necessary to and from the place so specified
- The repair of the goods under this clause does not include the cost or removal of defective

material and fixing replacement material

- The warranty under this clause does not apply to goods repaired by any person not authorised by the Company and does not apply if the goods are used for purposes other than that for which they were intended

**Privacy**

- The Customer authorises the Company to collect, retain and use personal information about the Customer (including the information collected in this document) for the following purposes only:
  - Assessing the Customer’s creditworthiness
  - Disclosing to a third party details of this application and any subsequent dealing it may have with the Company for the purpose of recovering amounts payable by the Customer and providing credit references
  - Credit checks

Signed:

\_\_\_\_\_ [Position Title], [Company Name]

Date:

\_\_\_\_\_

\_\_\_\_\_ [Position Title], [Customer Name]

Date:

\_\_\_\_\_

**Terms of Trade Example 2**

**[Company Name]**

**Terms and Conditions of Trade**

**Parties**

An Agreement dated [Date]

Between [Company Name], the supplier, called ‘The Company’  
[Address]

And [Customer Name], ‘The Customer’  
[Address]

1. Prices quoted are excluding GST unless otherwise stated and all goods sold are subject to GST.
2. Unless otherwise agreed, payment of the purchase price shall be paid to the Company by the 20<sup>th</sup> of the month following the month in which the invoice is dated.
3. Interest at 1.5% per month may be charged on overdue accounts.
4. Any expenses, costs and disbursements incurred by the Company in recovering any outstanding monies including debt collection agency fees or solicitor costs shall be paid by the Customer.
5. The Company shall deliver the goods to the address stated on the front page of this document. While every effort will be made to ensure that delivery of goods is on time, the Company will not be in any way responsible for any damages or consequential loss (direct or indirect) arising from any delay in delivery.
6. The Customer shall inspect the goods on delivery and shall within five days of delivery notify the Company of any alleged defect, shortage in quantity, damage, or failure to comply with description or sample. The customer shall afford the Company an opportunity to inspect the goods within a reasonable time following notice and before any use is made of them. If the Customer shall fail to comply with these provisions the goods shall be conclusively presumed to be free from any defect or damage which would be apparent on a reasonable examination of the goods and the Customer shall be deemed to have accepted the goods.

7. The Company shall not be responsible for any damage whatsoever caused in the event that the goods are fitted, serviced or operated incorrectly or if the goods are in any way adapted or used in a manner not intended by or made known to the Company.

8. The goods remain at the risk of the Company until the delivery to the Customer.

9. The Company shall be under no liability to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions of trade. Any claim against the Company shall be limited to the invoice value of the goods.

10. The Customer authorises the Company to collect, retain and use personal information about the Customer (including the information collected in this document) for the following purposes only:

(a) Assessing the Customer's creditworthiness.

(b) Disclosing to a third party details of this application and any subsequent dealing it may have with the Company for the purpose of recovering amounts payable by the Customer and providing credit references.

### **PPSA Security Interest**

11. By the acceptance of these terms and conditions of trade the Customer grants to the Company a Security Interest in the goods supplied and their Proceeds to secure the obligation of the Customer to pay the purchase price of the goods and any other obligation of the Customer under this agreement.

12. As and when required by the Company the Customer shall at their own expense provide all reasonable assistance and relevant information to enable the Company to register a Financing Statement or Financing Change Statement. The Customer will not change name without first notifying the Company of the new name not less than 7 days before the change takes effect.

13. The Customer waives the right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement registered by or on behalf of the Company in respect of the Security Interest created by these terms and conditions of trade.

Signed:

\_\_\_\_\_ [Position Title], [Company Name]

Date:

\_\_\_\_\_

\_\_\_\_\_ [Position Title], [Customer Name]

Date:

\_\_\_\_\_

### **Terms of Trade Example 3**

**[Company Name]**

### **Terms and Conditions of Trade Agreement**

#### **Parties**

An Agreement dated [Date]

Between [Company Name], the supplier, called 'The Company'  
[Address]

And [Customer Name], 'The Customer'  
[Address]

By requesting the Company to supply goods to the Customer, the Customer acknowledges and agrees that:

a) the Customer's written assent or agreement to the Company's terms and conditions of trade (the 'Terms') forming part of each Contract (as evidenced by the Customer's signature on the Company's credit application form or any other document which incorporates these Terms) is and

constitutes a security agreement in favour of the Company in all of the Customer's present personal property and after-acquired property, but that these Terms do not apply to property not supplied by the Company; and

b) the Terms will apply to each Contract and the supply of goods by the Company to the Customer and, where applicable, the provision of any incidental services under the Contract; and

c) the Terms will be or are deemed to be incorporated into, and form part of, each Contract, as if these Terms were set out or implied therein in full; and

d) each Contract will create or creates, in favour of the Company, a security interest in the goods which are the subject of the Contract; and

e) the security interest granted by the Customer to the Company secures the payment by the Customer to the Company of all amounts the Customer may owe the Company from time to time and at any time.

## **1. Interpretation**

1.1 In these Terms:

'Amount Owing' means, at any time in respect of the Contract, the unpaid part of the Price and any other amounts which the Company is entitled to recover under the contract (including these Terms);

'Company' means [Company Name];

'Contract' means any contract between the Company and the Customer for the supply of goods, whether created by electronic mail, order form or by any other means;

'Contract Date' means:

i) for a Contract arising from an order placed by the Customer, the date the Company accepted the order; or

ii) for a Contract arising from a quotation from the Company, the date the Company receives written notification of acceptance of the quotation or, if the Company receives no written notification of acceptance of the quotation, the date the Company receives a form of acceptance that the Company (in its absolute discretion) treats as a valid acceptance;

'Customer' means the person(s) described or referred to on the credit application form which these Terms form part of or (if applicable) the person(s) identified as such on any document which incorporates these Terms;

'Event of Default' means any of the following:

i) the Customer fails to comply with the Contract or any other Contract or agreement with the Company'

ii) the Customer is subject to any event which is in the nature of dissolution, winding up, bankruptcy, liquidation, insolvency or receivership, or which generally precedes such an event;

iii) an event occurs or information becomes known to the Company, which in the Company's opinion, might materially affect the Customer's creditworthiness, the value of the goods, or the Customer's ability or willingness to comply with its obligations under the contract or any other Contract or agreement with the Company;

iv) any guarantor of the Customer's obligations under the contract is in default under any agreement between the guarantor and the Company;

'FIS Contract' means a Contract under which goods are delivered on a 'free in store' basis;

'Goods' means all goods supplied by the Company to the Customer from time to time under the



Contract, provided that;

- i) (but solely for the purposes of the application of the PPSA) where the goods supplied are inventory of the Customer, then all references to Goods shall, in respect of those goods, be read as references to inventory for so long as they are held as inventory; and
- ii) references to Goods shall mean the goods described or referred to (whether by item or kind or otherwise) in the relevant delivery docket or invoice (or its equivalent, whatever called) prepared by the Company on the basis that each such delivery docket or invoice (or its equivalent) is deemed to be assented to by the Customer and to be included in and form part of the contract; and
- iii) unless the context requires otherwise, Goods shall include all proceeds of such goods and any objects, products or mass which the goods subsequently become part of;

'GST' means Goods and Services Tax;

'Person' includes a body corporate, an association of persons (whether corporate or not), firm or individual;

'PPSA' means the Personal Property Securities Act 1999; and

'Price' means the price of goods and (if applicable) any incidental services agreed between the Company and the Customer, subject to any variation in accordance with these Terms and, unless specifically agreed otherwise in writing, is expressed before the addition of GST and any other applicable taxes and duties.

1.2 Headings do not affect the interpretation of these Terms.

1.3 Unless the context requires otherwise, the following words and phrases (and grammatical variations of them) used in these Terms have the meanings given to them in, or by virtue of, the PPSA: 'after-acquired property', 'financing statement', 'future advance', 'goods', 'inventory', 'perfection', 'personal property', 'proceeds', 'purchase price', 'security agreement', 'security interest' and 'verification statement'.

1.4 A reference to an enactment includes that enactment as amended or substituted and includes any regulations made under that enactment.

1.5 A reference to any party under these Terms includes that party's successors and permitted substitutes and assigns.

## **2. Price and Payment**

2.1 The Price is the Company's current price for the goods and any incidental services as at the Contract Date or (if applicable, and subject to clauses 3 and 4) the Price quoted by the Company. Any difference between the price of the goods at the contract Date and at the date of delivery, due to circumstances beyond the Company's control, is to the Customer's account and the Price shall be adjusted accordingly.

2.2 Where the Customer requests the Company to estimate the quantity of the goods to be supplied from sketches, plans, schedules, specifications or otherwise, the Customer agrees to pay for any variation between the estimate and the actual quantities supplied and the Contract shall be deemed to be adjusted accordingly.

2.3 Where the Price is quoted on a FIS basis:

- i) the Price includes all expenses necessary for the Company to deliver the goods to the delivery site noted in the Contract;
- ii) unloading of the goods at the delivery site is to the Customer's account;
- iii) the Customer will arrange for unloading of the goods at the delivery site within 30 minutes of the carrier arriving on-site; otherwise, waiting time may be charged by the Company;

iv) the Customer will ensure at its own expense that a reasonably safe and hard surface road or access-way is made available for use by the Company's carrier.

2.4 Payment for the goods will be made on the terms contained in the Contract. If not otherwise specified in the Contract, the Customer shall pay for the goods on the 20<sup>th</sup> of the month following receipt of an invoice (time being of the essence). An invoice will be issued by the Company on delivery or proof of shipment. If the Company is required by law to repay any amount on account of the Price, that amount will be deemed not to have been received by the Company and the Company shall be restored to the position it would have been in had no such payment been received by the Company.

2.5 The Company may, at any time, require the Customer to pay the Price by letter of credit, bank cheque or to secure payment of the Price by providing an assignment of debt, lien, mortgage, charge, guarantee or any other form of security.

2.6 The Company shall, without prejudice to any other remedy available to it at law, be entitled to treat any failure to make payment on the due date as a repudiation of the Contract by the Customer. In no event shall the Company be obliged to make any delivery of goods if any moneys due and payable by the Customer under any other Contract remain outstanding.

2.7 All expenses, costs, fees, and disbursements incurred by the Company in recovering the Price and any other amounts payable under these Terms shall be recoverable from the Customer as part of the purchase price.

### **3. Quotes**

3.1 A quotation by the Company is based on the current price for the goods and any incidental services (based on the Company performing the work during normal working hours) and subject to availability from the Company's usual source of supply as at the date of the quote and shall not be binding on the Company unless the Customer has accepted the Company's quote within 30 days from the date of the Company's quote (time being of the essence).

3.2 The Company shall not be responsible for any errors or omissions caused by the mutilation or incorrect transmission contained in a facsimile message, email, or other means of transmission in which the Customer has accepted the Company's quote.

3.3 For the purpose of calculating increased costs under a non-fixed price Contract, the Price specified in the quote does not include any labour costs. The Price shall be adjusted by the Company to reflect all labour costs and any other increased costs.

3.4 Labour costs for the purpose of calculating increased costs under the Contract will be based on Labour Cost Index (All Labour Costs) plus an allowance for holiday pay and insurances.

3.5 No allowance is made in the Company's quotation for any items set out under Special Conditions in the Company's quotation form.

### **4. Variations**

4.1 Any requested variation to the goods or work covered by the Company's quotation must be notified in writing by the Customer. If the Company agrees, the Company's quotation and the Price will be adjusted accordingly. If a variation is agreed after the Contract is formed, the Contract and the Price will be adjusted accordingly.

4.2 Should the Customer request the Company to work overtime or extra shifts, the Price will be adjusted to reflect the increase in cost caused thereby based on the excess rates paid and working hours recorded.

4.3 The Price will be adjusted to reflect any extra cost or expense incurred by the Company because of any instruction received from the Customer or any action or inaction on the part of the Customer.

### **5. Contract**

5.1 These Terms shall be read subject to the express terms and conditions contained in the Company's quotation or contained in the Company's confirmation of order. The Contract is subject to the Company having the goods in stock and subject to availability from the Company's usual source of supply.

5.2 All other conditions, warranties, guarantees, descriptions, representations, conditions as to fitness or suitability for any purpose, tolerance to any conditions, merchantability, appearance, safety, durability or otherwise (whether of a like nature or not) and whether express or implied by law, trade custom or otherwise, are expressly excluded.

5.3 If there is a conflict between the Customer's order and the Company's confirmation of order (including these Terms), the Company's confirmation of order (including these Terms) will prevail.

5.4 An agent or representative of the Company is not authorised to make any representations, warranties, or agreements that a senior executive of the Company has not confirmed in writing. The Company is not bound by unauthorised statements. Unauthorised statements cannot form a contract, or part of a contract, collateral to the Contract.

5.5 The rights, powers and remedies provided for in the Contract (including these Terms) are in addition to, and do not limit or exclude (or otherwise adversely affect), any right, power or remedy provided to the Company by law.

5.6 The Customer's obligation to pay amounts (other than the Price) to the Company under these Terms shall be continuing and separate obligations which will survive termination of the contract and payment of the Price.

## **6. Taxes and Duties**

Unless expressly included in the quotation from the Company, the Price will be stated before the addition of GST and any other taxes and duties charged or levied in connection with the supply of the goods and any incidental services to the Customer. GST and all such other taxes and duties will be charged to and borne by the Customer (in each case, at the rate applicable at the date of any relevant invoice).

## **7. Default Penalty**

The Company may charge the Customer a Default Penalty on any moneys due but unpaid under the contract which will be calculated daily at a rate of 1.5 per cent per month. The Default Penalty is without prejudice to any of the Company's rights, powers or remedies arising after the Customer's payment default.

## **8. Delivery**

8.1 Delivery of the goods will be made at the Customer's premises unless the Customer has instructed otherwise. If the Customer fails to take delivery, the goods are deemed to have been delivered when the Company was willing to deliver them, and the Customer shall pay the Company an amount equal to any extra cost the Company incurs for either transport or storage or both.

8.2 The Company accepts no responsibility for delay in delivery howsoever caused.

8.3 Delivery is deemed to occur:

i) for a FIS Contract, when the goods are ready and available for the unloading at the delivery point noted in the Contract or the site designated by the Customer:

ii) in any other case, when possession of the goods is taken by the Customer.

8.4 The Company may deliver goods by instalments. Each instalment is deemed to be a separate contract on the same terms as the Contract. If the Company fails to deliver, or makes defective delivery of, one or more instalments, the Customer is not entitled to cancel the Contract.

8.5 Delivery of 10% more or less of the quantity of goods ordered by the Customer constitutes performance of the Contract by the Company. The amount under or over supplied shall be deducted or charged for pro rata and the Price shall be adjusted accordingly.

8.6 If the Customer requests delivery to be made outside of normal working hours, the Customer

shall pay to the Company an amount equal to any extra cost the Company incurs for transport.

## **9. Risk**

9.1 All risk in and for the goods passes to the Customer on delivery by the Company.

i) If any of the goods are damaged or destroyed prior to property in them passing to the Customer, the Company is entitled, without prejudice to any of its other rights or remedies under the Contract (including the right to receive payment of the Price), to receive all insurance proceeds payable for the goods. This applies whether or not the Price has become payable under the Contract. The production of the contract (including these Terms) by the Company is sufficient evidence of the Company's right to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.

## **10. Property**

10.1 Property in, ownership of and title to the goods shall not pass to the Customer until:

- i) the Customer pays the Amount Owing in full and all other amounts owing under other contract; or
- ii) (if applicable) the Customer resells the goods pursuant to the authority granted by these Terms.

10.2 Until property in goods passes to the Customer, the Customer holds the goods as the Company's bailee and, as agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the goods are kept to inspect the goods. The Customer must store the goods so they can be identified separately from the Customer's own goods. The Company authorises the Customer, in the ordinary course of the Customer's business, to use the goods or resell them for full consideration.

10.3 This authority is revoked immediately if:

- i) an Event of Default occurs; or
- ii) the Company notifies the Customer in writing that this authority is revoked.

## **11. Mill Certificates**

If requested by the Customer, the Company will supply a mill certificate for the goods. The Company may charge the Customer a fee for the mill certificate.

## **12. Fabrication**

12.1 If the Company fabricates the goods, the Company warrants the fabrication against faulty workmanship for a period of 6 months from the date of delivery of the goods.

12.2 The Company warrants that the fabricated goods will substantially conform with written specifications supplied by the Customer.

12.3 A claim under this clause must be in writing to the Company (addressed to the Company Secretary) within 6 months from the date of delivery of the goods and no claim can be made under this clause unless and until the Price is paid in full. The Customer must also give the Company notice of any defect in the goods within 7 days of the defect becoming apparent.

12.4 The Company's liability under this clause will be limited in its sole discretion to:

- i) restoring the goods in conformity with the written specifications supplied by the Customer; or
- ii) replacing the goods

12.5 Any repairs will be done at such place as the Company specifies and the Customer is responsible for cartage of the goods or parts of the goods as is necessary to and from the place so

specified.

12.6 The repair of the goods under this clause does not include the cost or removal of defective material and fixing replacement material.

12.7 The warranty under this clause does not apply to goods repaired by any person not authorised by the Company and does not apply if the goods are used for purposes other than that for which they were intended.

### **13. Return of Goods**

13.1 Except as provided in this clause, the Customer is not entitled to return the goods to the Company for any reason. For defective goods which the Customer is entitled to reject, the Company's liability is limited to either (at the Company's discretion) repairing or replacing the goods, or refunding the Price provided that:

- i) the Customer must notify the Company within 7 days of delivery that the goods are defective;
- ii) the Company is given a reasonable opportunity to investigate the Customer's claim;
- iii) the Company will not be liable for goods which have been tampered with or modified without the Company's approval or which have not been stored or used in a proper manner; and
- iv) the Company will not be liable to pay the Customer any amount more than the amount (if any) the Company actually receives from the supplier for the defective goods.

13.2 The Company may (in its discretion) accept the goods for credit but this will incur a handling fee of such amount as the Company may determine (and notify to the Customer) and the amount of any credit will be less any freight costs.

### **14. Liability**

14.1 The Company will not be liable for:

- i) failure to deliver the goods by a specified date;
- ii) an event beyond the Company's control;
- iii) failure of the goods howsoever arising;
- iv) testing the goods;
- v) deterioration of the goods due to exposure to the elements after delivery;
- vi) any negligence, misrepresentation or other act or omission by the Company or its agents; or
- vii) any loss or damage resulting directly, or indirectly, from any of the above.

14.2 Despite anything else, any liability of the Company arising under the contract will not exceed the value of the replaced goods in relation to which the liability has arisen.

### **15. Default**

15.1 If an Event of Default occurs, and without prejudice to any other rights, powers or remedies the Company may have:

- i) the Company may suspend or terminate the supply of goods to the Customer and any of its other obligations under the contract (and any other Contract), or cancel all or any part of any order with the Customer which remains underperformed;
- ii) all Amounts Owing shall immediately become due and payable notwithstanding that the due date for payment has not arisen; and
- iii) the Company may enforce any security interest granted to it by the Customer.

15.2 The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company exercises any rights, powers, or remedies after the occurrence of an Event of Default, including under this clause.

15.3 The Customer agrees that, at any time after an Event of Default has occurred or at any time if any goods are at risk, the Company may;

i) take possession of any goods; and/or

ii) sell or dispose of any goods in such manner and generally on such terms and conditions as the Company thinks fit, and, in each case, otherwise do anything the Customer could do in relation to the goods. The Company and the Customer agree that section 109(1) of the PPSA is contracted out of in respect of particular goods if and only for so long as the Company is not the secured party with priority over all other secured parties in respect of those goods. As agent for the Customer, the Company (and its employees and agents) may, without prior notice, enter upon any land or premises where the Company believes the goods are kept to take possession of and/or remove them. The Customer agrees to procure all other rights (including consents) necessary to enable, and to indemnify the Company (and its employees and agents) against any liability incurred in connection with, such entry, taking of possession and removal.

## **16. Patents and Copyright**

16.1 Copyright in all drawings, specifications and other technical information provided by the Company concerning the Contract is vested in the Company.

16.2 If the goods are to be supplied to the Customer's design, the Customer warrants that the manufacture and supply of the goods by the Company will not infringe any patent, copyright, registered design, or other rights of any other person. The Customer agrees to indemnify the Company against any liability it incurs (including any costs and expenses) because of any claim that the manufacture or supply of the goods by the Company infringes any patent, copyright, registered design, or other rights of any other person.

## **17. Dimensions and Specifications**

Dimensions and specifications referred to in the Contract, a catalogue or other publication maintained or issued by the Company are estimates only. Unless the Company agrees in writing, it is not a condition of the Contract that the goods will correspond precisely with the dimensions, specifications, or customary tolerances. In the absence of customary tolerances, reasonable tolerances will be allowed.

## **18. Consumer Guarantees Act 1993 ('CGA')**

18.1 If the Customer is not a consumer as defined in the CGA or the Customer acquires or holds itself out as acquiring the goods under the Contract for the purposes of a business, nothing in the CGA will apply to the supply of the goods.

18.2 In the case of any Customer (to which clause 18.1 does not apply), the provisions of the Contract (including these Terms) will only apply to the extent that such provisions do not limit or exclude any provisions of the CGA and will take effect subject to the provisions of the CGA.

## **19. PPSA**

19.1 To the extent permitted by law, the Customer, and the Company contract out of:

i) section 114(1)(a) of the PPSA; and

ii) the Customer's rights referred to in sections 107(2)(c), (d), (h) and (i) of the PPSA.

19.2 The Customer waives its right to receive a copy of any verification statement in respect of any financing statement relating to any security interest granted to the Company by the Customer.

19.3 The Customer agrees to indemnify the Company, upon demand, for all costs and expenses (including legal fees) incurred by the Company:

- i) because of the occurrence of an Event of Default (including upon actual or attempted enforcement of any security interest granted to the Company by the Customer); and
- ii) in complying with any demand made under section 162 of the PPSA.

19.4 On the request of the Company, the Customer shall promptly do all things (including signing any delivery docket and/or invoice) and provide all information necessary to enable the Company to perfect and maintain the perfection of any security interest granted to the Company by the Customer (including by registration of a financing statement).

## **20. Waiver and Severability**

20.1 All the rights, powers, exemptions, and remedies of the Company remain in force despite any neglect, forbearance, or delay in enforcing them. The Company will not be considered to have waived any right, power, remedy, or condition unless the waiver is in writing under signature of either the Company or an authorised officer. The waiver applies only in a particular transaction, dealing or matter unless the Company agrees otherwise.

20.2 If any part of the Contract (including these Terms) or any other contract.

## **21. Compliance with Laws**

The Company will comply with all legislation, codes and standards specified in the contract and the Company is under no liability for a failure to meet any other legislation, codes, or standards. If, after the Contract Date, there are any changes in legislation, codes, or standards with which the Company must comply, then the Customer agrees to reimburse or pay to the Company an amount equal to any additional costs incurred by the Company relating to such compliance.

## **22. Assignment and Change of Name Etc**

22.1 The Customer may not assign any of the Customer's rights or obligations under the contract without the Company's prior written consent.

22.2 The Company may assign any of the Company's rights under the contract without the Customer's consent.

22.3 The Customer must give the Company (addressed to the Company Secretary) not less than 14 days' prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including, but not limited to, changes in the Customer's address, facsimile number, trading name or business practice).

## **23. Trustee Liability**

If the Customer is a trust, the contract will bind each trustee of that trust and each trustee personally. The Company's rights against each trustee will only be limited if the trustee is an independent trustee (not being a trustee who has a right to or interest in any of the assets of the trust). However, this shall not affect the liability of an independent trustee who has guaranteed, in his or her personal capacity, the Customer's obligations under the contract.

## **24. Review of Terms**

The Company reserves the right to review any of these Terms at any time and from time to time. If, following any such review, there is any change to these Terms that change will take effect from the date on which the Company gives notice to the Customer of such change.

## **25. Two or More Contracts**

Where, at any time, there is an Amount Owing under two or more contracts, the Company may apply a payment made by the Customer under the contract in such manner (including in such order and to any amounts owing to the Company, including under another Contract) as the Company thinks fit (despite any direction to the contrary and whether before or after any default by the Customer). The security interest provided for by these Terms and created by the Contract also secures the Amount Owing under any other

Contract, and each Contract (and these Terms) shall be construed accordingly.

## **26. Governing Law**

The Contract and these Terms are governed by the law of New Zealand.

Signed:

\_\_\_\_\_ [Position Title], [Company Name]

Date:

\_\_\_\_\_

\_\_\_\_\_ [Position Title], [Customer Name]

Date:

\_\_\_\_\_

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